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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 Morica Kraft, a single woman,

Case No.:

9 Plaintiff,

COMPLAINT

10 vs.

JURY DEMAND

11 Cunningham & Associates, Inc., an Arizona
12 corporation; George Cunningham and Jane Doe
13 Cunningham 1, husband and wife; Bob L.
14 Cunningham and Jane Doe Cunningham 2,
husband and wife; Patricia A. Cunningham and
John Doe Cunningham, wife and husband,

15 Defendants.

16 Plaintiff Morica Kraft ("Plaintiff"), for her Complaint against Defendants Cunningham
17 & Associates, Inc. ("Cunningham"), George Cunningham, Jane Doe Cunningham 1, Bob L.
18 Cunningham, Jane Doe Cunningham 2, Patricia A. Cunningham and John Doe Cunningham
19 (collectively, "Defendants"), alleges as follows:

20 **NATURE OF THE CASE**

21 1. Plaintiff brings this action against Defendants for unlawful failure to pay
22 overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
23 ("FLSA") and the Arizona Wage Statute, A.R.S. §§ 23-351, 23-353, and 23-355 ("Arizona
24 Wage Statute").

25 / / /

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter and the parties hereto pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

3. Plaintiff's state law claim is sufficiently related to the FLSA claim that it forms part of the same case or controversy. This Court therefore has supplemental jurisdiction over Plaintiff's claim under the Arizona Wage Statute pursuant to 28 U.S.C. § 1337.

4. Venue is proper under 28 U.S.C. § 1391(b) because all of the events or omissions giving rise to the claims occurred in this District.

PARTIES

5. Plaintiff is an unmarried woman residing in Maricopa County, Arizona.

6. Defendant Cunningham & Associates, Inc. is incorporated in the State of Arizona and has its principal place of business at 6502 North 27th Avenue, Phoenix, AZ 85017.

7. Cunningham operates a commercial and industrial auction and appraisal company, handling bank-owned, foreclosure and bankruptcy assets.¹

8. Defendant George Cunningham is the President and a Director of Cunningham & Associates, Inc., and, upon information and belief, resides in Maricopa County, Arizona.

9. Defendant Bob L. Cunningham is the Secretary and a Director of Cunningham & Associates, Inc., and, upon information and belief, resides in Maricopa County, Arizona.

10. Defendant Patricia A. Cunningham is the Treasurer and a Director of Cunningham & Associations, Inc., and upon information and belief, resides in Maricopa County, Arizona.

11. As such, Defendants George Cunningham, Bob L. Cunningham and Patricia A.

¹ Source: http://www.auctionaz.com/00about_us.htm, accessed on December 13, 2012.

1 Cunningham act in the interest of Defendant Cunningham & Associates, Inc., and are subject
2 to individual liability as employers of Plaintiff.

3 12. Defendants George Cunningham and Jane Doe Cunningham 1 are husband and
4 wife. Jane Doe Cunningham 1 is the fictitious name for George Cunningham's wife. When
5 her true name has been ascertained, this Complaint shall be amended accordingly. George and
6 Jane Doe Cunningham 1 have caused events to take place giving rise to this Complaint as to
7 which their marital community is fully liable.

8 13. Defendants Bob L. Cunningham and Jane Doe Cunningham 2 are husband and
9 wife. Jane Doe Cunningham 2 is the fictitious name for Bob L. Cunningham's wife. When
10 her true name has been ascertained, this Complaint shall be amended accordingly. Bob L. and
11 Jane Doe Cunningham 2 have caused events to take place giving rise to this Complaint as to
12 which their marital community is fully liable.

13 14. Defendants Patricia A. Cunningham and John Doe Cunningham are wife and
14 husband. John Doe Cunningham is the fictitious name for Patricia A. Cunningham's husband.
15 When his true name has been ascertained, this Complaint shall be amended accordingly.
16 Patricia A. and John Doe Cunningham have caused events to take place giving rise to this
17 Complaint as to which their marital community is fully liable.

18 15. At all relevant times, Plaintiff was an "employee" of Cunningham, as defined by
19 29 U.S.C. §203(e)(1).

20 16. The provisions set forth in 29 U.S.C § 206 and § 207, respectively, of the FLSA
21 apply to Cunningham, and Plaintiff was covered by these sections of the FLSA during her
22 employment by Cunningham.

23 17. At all relevant times, Cunningham was and continues to be an employer as
24 defined in 29 U.S.C. § 203(d).

25 18. At all times material to this action, Cunningham was and is an enterprise engaged

1 in commerce or in the production of goods for commerce as defined by § 203(s)(1) of the
2 FLSA.

3 19. Upon information and belief, at all relevant times, the annual gross revenue of
4 Cunningham exceeded \$500,000.00.

5 **FACTUAL BACKGROUND**

6 20. Cunningham hired Plaintiff to work as a non-exempt hourly paid administrative
7 assistant from approximately March 3, 2009 through February 26, 2011.

8 21. Plaintiff was paid an hourly wage of \$15.00 per hour.

9 22. Plaintiff's primary duties were secretarial: answering phone calls, taking
10 messages, scheduling meetings, clearing and rotating photos, and compiling detailed and
11 accurate descriptions of the assets.

12 23. Due to two co-workers leaving the company, and the online auction
13 administrator on vacation, Plaintiff had to assist the warehouse manager, inputting
14 descriptions, lotting, photographing assets, image renaming and reconciling the last three
15 auctions, as well as uploading auctions for online bidding. The latter were not normal duties of
16 Plaintiff's position, but there was not enough staff to handle the volume of assets obtained by
17 Defendant.

18 24. From March 2009 and continuing through February 2011, Defendant failed to
19 properly compensate Plaintiff for any of her overtime hours. During this time, Plaintiff was
20 regularly scheduled to work 55 hours per week. Plaintiff also routinely worked additional
21 shifts.

22 25. For example, the week of February 26, 2011, Plaintiff worked over 80 hours. She
23 was only compensated for 40.

24 26. Cunningham has failed to maintain proper time records as mandated by the
25 FLSA.

27. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in Cunningham's possession and custody.

28. Cunningham's failure and/or refusal to properly compensate Plaintiff at the rates and amounts required by the FSLA was willful.

29. Cunningham refused and/or failed to properly disclose or apprise Plaintiff of her rights under the FLSA.

30. Plaintiff has retained the law firm of Phillips Law Group, P.C., to represent her in this litigation and has agreed to pay a reasonable fee for the services rendered in the prosecution of this action on her behalf.

COUNT ONE
(Failure to Pay Overtime Wages - FLSA - 29 U.S.C. § 207)

31. Plaintiff incorporates and adopts paragraphs 1 through 30 above as if fully set forth herein.

32. Plaintiff was a non-exempt employee entitled to statutorily mandated overtime pay.

33. Plaintiff was not a manager.

34. Plaintiff did not exercise discretion and independent judgment with respect to matters of significance.

35. Cunningham was an employer as defined in the FLSA.

36. Cunningham failed to comply with 29 U.S.C. § 207, because Plaintiff worked in excess of forty hours per week, but Cunningham failed to pay Plaintiff for those excess hours at the statutorily required rate of one and one-half times Plaintiff's regular rate of pay as required by the FLSA.

37. Cunningham's violation of the FLSA overtime provision was willful, as

1 Cunningham knew of the FLSA and chose to violate it.

2 38. As a result of Cunningham's violations of the FLSA, Plaintiff has suffered
3 damages by failing to receive compensation in accordance with § 207 of the FLSA.

4 39. Cunningham has not made a good faith effort to comply with the FLSA.

5 40. In addition to the amount of unpaid overtime wages owed to Plaintiff, she is also
6 entitled to recover an additional equal amount as liquidated damages pursuant to 29 U.S.C. §
7 216(b).

8 41. Plaintiff is also entitled to an award of attorneys' fees pursuant to 29 U.S.C. §
9 216(b).

10 WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor
11 against Defendants:

- 12 a. Awarding Plaintiff overtime compensation in the amount due to her for all of
13 Plaintiff's time worked in excess of forty (40) hours per work week at an
14 amount equal to 1 ½ times Plaintiff's regular rate while at work at Defendant
15 Cunningham and Associates.
- 16 b. Awarding Plaintiff liquidated damages in an amount equal to the overtime
17 award;
- 18 c. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the
19 litigation pursuant to 29 U.S.C. § 216(b);
- 20 d. For Plaintiff's costs incurred in this action.
- 21 e. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
22 amounts set forth in subsections a and b above from the date of the payment
23 due for that pay period until paid in full.
- 24 f. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all
25 awards from the date of such award until paid in full.

1 g. Ordering any other and further relief as the Court deems just and proper.
2

3 **COUNT TWO**
4 **(Failure to Pay Timely Wages Due - Arizona Wage Statute)**

5 42. Plaintiff incorporates and adopts paragraphs 1 through 41 above as if fully set
6 forth herein.

7 43. Defendants were aware of their obligation to pay timely wages pursuant to
8 A.R.S. § 23-351.

9 44. Defendants were aware that, under A.R.S. § 23-353, they were obligated to pay
10 all wages due to Plaintiff.

11 45. Defendants failed to timely pay Plaintiff her wages due without a good faith
12 basis for withholding the wages.

13 46. Defendants have willfully failed and refused to timely pay wages due to Plaintiff.
14 As a result of Defendants' unlawful acts, Plaintiff is entitled to the statutory remedies provided
15 pursuant to A.R.S. § 23-355.

16 WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor
17 against Defendants:

18 a. Awarding Plaintiff overtime compensation in the amount due to her for all of
19 Plaintiff's time worked in excess of forty (40) hours per work week at an
20 amount equal to 1 ½ times Plaintiff's regular rate while at work at Defendant
21 Cunningham and Associates.
22 b. Awarding Plaintiff treble the amount calculated pursuant to A.R.S. §23-355.
23 c. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the
24 litigation pursuant to A.R.S. §12-341.01.
25 d. For Plaintiff's costs incurred in this action.

- 1 e. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
- 2 amounts set forth in subsections a and b above from the date of the payment
- 3 due for that pay period until paid in full.
- 4 f. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all
- 5 awards from the date of such award until paid in full.
- 6 g. Ordering any other and further relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby requests that upon trial of this action, all issues be submitted to and
9 determined by a jury except those issues expressly reserved by law for determination by the
10 Court.

11 Dated: December 13, 2012

Respectfully submitted,

12 **PHILLIPS LAW GROUP, P.C.**

13 By /s/“Trey” A.R. Dayes III
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15 Attorney for Plaintiff